

810-3-61-.07 Continuing Eligibility of Scholarship Granting Organization (SGO) to Participate in the Tax Credit Scholarship Program.

(1) Scope: Act 2013-64, as amended by Acts 2013-265 and 2015-434, establishes certain requirements for the operation of Scholarship Granting Organizations (SGOs) and requires SGOs to report certain information to the Department of Revenue. The Acts also authorize the department to bar an SGO from participating in the Tax Credit Scholarship Program (program) if the department establishes that the SGO has intentionally and substantially failed to comply with the requirements of the program. This rule prescribes the process of notifying an SGO of its non-compliance with a requirement, the effect of such notice on the operation of the SGO, and the steps required of the SGO to be reinstated to the program.

(2) Each SGO shall file reports with the department containing the information explained in Rule 810-3-61-.05, by the following due dates: (1) the annual report shall be due on the first day of September of each calendar year, and (2) each quarterly report shall be due on the fifteenth day of the month following the close of the previous calendar year quarter.

(3) The required reports shall be on a form prescribed by the department.

(4) If any required report for an SGO has not been received by such report's due date, the SGO will be deemed to have intentionally and substantially failed to comply with the requirements of the program. An SGO filing a delinquent annual report may attach an explanation of any circumstances preventing the timely filing of the report. Upon review of any explanations provided, the department may excuse the delinquency if warranted.

(5) The SGO shall complete the Summary of Compliance section of the annual report, based on the numbers, dollars and percentages reported elsewhere in the report. If the SGO answers "NO" to any compliance question, it may attach to the report documentation explaining any extraordinary circumstances preventing the requirement from being met.

(6) The review of the initial annual report, timely filed by an SGO, will not result in a determination of intentional and substantial failure to comply with the requirements of the program, solely because of "NO" answers shown in the Summary of Compliance section of the SGO's report. Such "NO" answers will indicate failure to comply with the requirements, but shall not be deemed to be intentional and substantial.

(7) Annual reports for years after the initial year of operation of an SGO will be reviewed for any answers that should be listed as "NO" in the Summary of Compliance section. Any such "NO" answers will indicate failure to comply with the requirements of the program. Any documentation of extraordinary circumstances attached to the report may be considered by the department in determining whether the failure to comply will be deemed intentional and substantial.

(8) If an SGO's answer to any particular compliance question is, or should be, reported as "NO" for two consecutive annual reports, the SGO will automatically be deemed to have intentionally and substantially failed to comply with the requirements of the program.

(9) Upon a determination that an SGO has intentionally and substantially failed to comply with the requirements of the program, or after September 30th in the case of a missing annual report, the department will notify an SGO of its determination and of its intention to suspend the eligibility of the SGO to participate in the Tax Credit Scholarship Program. Unless appealed, as provided in (10) below, the suspension shall become effective 30 days from the date the notice is mailed to the SGO.

(10) The determination to suspend an SGO from participating in the Tax Credit Scholarship Program may be appealed by the SGO, in the same manner as the denial or revocation of licenses, permits, and certificates of title administered by the department, as provided in Code of Alabama 1975, Section 40-2A-8; within 30 days of the date notice of the department's determination is mailed to the SGO.

(11) An SGO whose participation in the Tax Credit Scholarship Program has been suspended will be removed from the department's website through which donors reserve tax credits for contributions under the program. No tax credits will be allowed for donations made to an SGO during a period of suspension.

(12) An SGO whose participation in the program has been suspended, and whose name has been removed from the department's website through which donors reserve tax credits for contributions must, nevertheless, account for funds and award scholarships in accordance with the requirements of the program. All annual reports due, regardless of any suspension, must be timely filed.

(13) Upon receipt and review of a timely filed annual report for a year ending during a period of suspension, the department may reinstate the SGO to participation in the program, if the answers to all questions in the Summary of Compliance section of the report are properly reportable as "YES". Tax credits may be allowed for donations made after reinstatement of the SGO.

(14) If the department concludes that any "YES" answer reported in the Summary of Compliance section of an annual report should have been reported as "NO" or if the department concludes that the SGO has failed to comply with the requirements of the program for another reason, the department will allow the SGO an opportunity to contest the department's conclusion, and to provide documentation explaining any extraordinary circumstances causing the failure to comply, before determining that the failure to comply with the requirements of the program will be considered intentional and substantial.

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Authority: Sections 40-2A-7(a)(5) and 16-6D-1, Code of Alabama 1975
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